

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

STATE OF UTAH, *et al.*,

*Plaintiffs,*

v.

MARTIN J. WALSH and UNITED STATES  
DEPARTMENT OF LABOR,

*Defendants.*

No. 2:23-cv-00016-Z

**PLAINTIFFS’ OPPOSITION TO MOTION TO TRANSFER VENUE**

Plaintiff Alex Fairly is an individual who resides in the Amarillo Division. That, by itself, defeats the Defendants’ Motion to Transfer Venue, which hinges on their position that no plaintiff resides here.

Fairly had not joined the case when the Defendants filed their motion, which allowed them to skirt the real reason they want this case transferred: they doubt that the Court will determine this case fairly. They couch their doubt in terms of “public perceptions” of impartiality—but if reasonable members of the public believe the Court isn’t impartial, that is a basis for a recusal, not a change in venue. If there is evidence to support such an accusation, the Defendants should have the courage of their convictions and move to recuse. If they don’t, then their “public perception” concerns amount to nothing more than an accusation of forum shopping, for which the transfer factors already account.

And none of the Defendants’ other arguments stands up. Federal courts are unanimous that, as a sovereign State, Texas by definition resides in every place within its borders. The Defendants barely attempt to carry their burden to establish that another venue is clearly more convenient, identifying not a single witness, piece of evidence, or cost that warrants moving this case to somewhere they prefer.

This case was properly brought here, and Defendants offer no evidence to support their assertion that it should be elsewhere. Defendant’s motion to transfer should be denied.

## LEGAL STANDARDS

The general venue statute, 28 U.S.C. § 1391, includes subdivision (e), enacted in 1962 to govern venue in civil suits against “an officer or employee of the United States or any agency thereof . . . or an agency of the United States[.]” One of the permissible venues for such a suit is a district where a “plaintiff resides if no real property is involved in the action.” *Id.*

If a plaintiff chooses an improper venue, the court can transfer the case to a proper one. 28 U.S.C. § 1406(a). If a lawsuit is filed in a proper venue, the court may, under some circumstances, transfer it to a district or division where it might have been brought “for the convenience of the parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). The movant must show good cause for such a transfer by showing, based on eight factors, that its proposed venue is “clearly more convenient” than the one the plaintiff chose. *In re Volkswagen of Am., Inc. (Volkswagen II)*, 545 F.3d 304, 315 (5th Cir. 2008). If it doesn’t meet that burden, the plaintiff’s choice should be respected. *Id.*

## ARGUMENT

This case should remain here because this is a proper venue under 28 U.S.C. § 1391(e) and the Defendants did not demonstrate that another venue is clearly more convenient.

First, Amarillo is a proper venue. For one, a plaintiff, Alex Fairly, resides here, which is all that is required to establish venue under 28 U.S.C. § 1391(e). Further, contrary to Defendants’ argument, Texas resides here. A sovereign State, by definition and common sense, resides in every place within its borders. Every court that has considered Defendants’ argument that a state resides only in its capital city has rejected it. There is no reason for this Court to do differently.

Second, the Defendants did not establish that another district or division would clearly be more convenient for the parties and witnesses. Not a single one of the eight private or public interest factors the Court must consider supports transfer. In particular, there is no

reason to assuage the putative “public interest” Defendants conjure against “judge shopping.” Any public interest in impartial consideration of cases is protected by statutes requiring recusal if a judge can reasonably be believed to be biased or prejudiced. The Defendants cannot back-door such an accusation by laundering Twitter posts, whispers, and partisan suppositions into a so-called “public interest” against filing cases in single-judge divisions.

The motion to transfer venue should be denied.

**I. Venue is proper here because multiple plaintiffs reside here.**

One of the proper venues for a case against the federal government is a district and division where any plaintiff resides. 28 U.S.C. § 1391(e)(1)(C). Plaintiff Alex Fairly lives in Amarillo, operates a business here, and serves as a fiduciary of an ERISA fund here, *see* ECF 47 ¶¶ 37, 61–62, so this is a proper venue.

Texas, being a sovereign State, resides here, too—just as it does at all points within its borders. The cases on this question are unanimous that a State is “ubiquitous throughout its sovereign borders” and therefore does not, *contra* the Defendants, reside solely in its capital city. *California v. Azar*, 911 F.3d 558, 570 (9th Cir. 2018). *See also Atlanta & F. Ry. Co. v. Western Ry. Co. of Alabama*, 50 F. 790, 791 (5th Cir. 1892); *Alabama v. Army Corps of Engineers*, 382 F. Supp. 2d 1301, 1328–29 (N.D. Ala. 2005); *Pennsylvania v. Trump*, 352 F. Supp. 3d 791, 808–09 (E.D. Pa. 2019), *revd. on other grounds sub nom. Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367 (2020); *Florida v. United States*, No. 3:21-cv-1066, 2022 WL 2431443, \*2 (N.D. Fla. Jan. 18, 2022). The proposition is so commonsensical and established that Wright & Miller flatly states, “Sometimes, cases to which Section 1391(e) applies are brought by states. A state is held to reside in any district within it.” 14D Wright & Miller, *Federal Practice and Procedure* § 3815 (4th ed. 2022). Even if Fairly had not joined the case, this would be a proper venue.

**II. Defendants did not show that another venue is clearly more convenient.**

Because this is a proper venue, the case may be transferred only if another venue is clearly more convenient for the parties and witnesses. None of the eight private and public interest factors on which convenience is judged favors transfer; at the very least, the Defendants have not established the contrary. The Plaintiffs' choice of this venue must therefore be deferred to, and the motion to transfer should be denied.

**A. The private interest factors weigh against transfer.**

**1. The sources of proof are relatively easy to access.**

This case is about the judicial review of the Defendants' largely undisputed actions; how those actions are inconsistent with federal law, including ERISA and the Administrative Procedure Act; and the appropriate remedies if the Defendants' actions are found unlawful. It isn't likely to involve extensive witness testimony or determinations of credibility. The parties will have ready and full access to the primary source of proof, the administrative record, no matter where this case is heard.

What the Court stated in denying a motion to transfer venue in the *Texas MPP* case is true here, too:

[T]his case is about a nationwide policy with nationwide effect. Whether the agency action challenged in this case is lawful will not turn on facts and testimony found [in a particular place]. Rather, this case will turn on the administrative record . . . and the application of legal standards to agency action.

*Texas and Missouri v. Biden (Texas MPP)*, No. 2:21-cv-00067, ECF 47 at 3–4 (N.D. Tex. June 3, 2021). Indeed, as it further noted, the “‘record rule’ normally dictates that ‘the grounds on which an administrative order must be judged are those upon which the record discloses that its action was based.’” 554 F. Supp. 3d 818, 847 (N.D. Tex. 2021). This principle substantially limits the extent of testimony and other evidence the parties can present in this case.

Non-record evidence here would likely concern the Plaintiffs’ standing, their injuries, and the scope of relief they should be afforded—each a long-recognized exception to the record rule. *See, e.g., Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1528 (9th Cir. 1997); *Esch v. Yeutter*, 876 F.2d 976, 991 (D.C. Cir. 1989). Those witnesses, however, are likely to be under the Plaintiffs’ control—and, in Fairly’s case, actually at home in Amarillo. The Defendants did not identify a single witness or piece of evidence that would be easier to access were this case transferred elsewhere. (They mention the administrative record is “located” in Washington, D.C., but don’t explain why that matters for a document that will be electronically filed with the Court.) Indeed, if history is any guide, the Defendants are unlikely to identify or call witnesses at all. When the Court tried *Texas MPP* in 2021, the federal Defendants chose to call no witnesses. Nor did the federal Defendants call witnesses at the trial regarding the legality of the DHS “prioritization” policy in *Texas and Louisiana v. United States*, No. 6:21-cv-16 (S.D. Tex. 2022), last year. Their choice to identify no witnesses and no evidence in their motion to transfer here suggests that this case will be the same.

“Courts do not afford significant weight to general allegations that a particular forum would be more convenient for unspecified witnesses. . . . Instead, parties must specifically identify each witness and provide an overview of their testimony[.]” *McNew v. C.R. Bard, Inc.*, No. 1:19-cv-195, 2020 WL 759299, at \*2 (N.D. Tex. 2020) (Hendrix, J.). The Defendants identified zero. On the other hand, a plaintiff who can testify about the injuries this rule will cause him lives in this division. This factor weighs against transfer.

**2. There is no evidence that compulsory process will be necessary or that costs will affect the attendance of willing witnesses.**

The Defendants identified no potential witnesses whose attendance they may need to secure. There is thus no evidence that they will need compulsory process to secure their attendance, nor is there evidence that costs will affect the attendance of witnesses for whom compulsory process is unnecessary. These factors are at worst neutral.

**3. There is no evidence relevant to the catchall factor.**

The final private interest factor “is the catchall of all other practical problems that make trial of a case easy, expeditious, and inexpensive.” *In re Volkswagen AG (Volkswagen I)*, 371 F.3d 201, 203 (5th Cir. 2004). The Defendants identify none. Having tried both *Texas and Louisiana v. United States* and *Texas and Missouri v. Biden* in the last two years, they certainly would have done so if any existed. This factor is at worst neutral.

**B. The public interest factors weigh against the proposed transfer.**

**1. Court congestion isn’t a concern.**

This public interest factor strongly favors keeping this case here. Defendants raise no argument about court congestion, likely because there is no plausible claim that a transfer to the District of Columbia, to Austin, or to another division of the Court would avoid administrative difficulties flowing from court congestion.

Statistics from the Administrative Office of the U.S. Courts confirm that this division is likely to determine this case with more alacrity than either the Austin Division or the District Court for the District of Columbia. The median time from commencement of a civil suit to trial in the Northern District of Texas for the twelve months ending September 30, 2022, was 24.1 months. This compared to 28.9 months for the Western District of Texas (20% higher) and 49.9 months for the District of Columbia (107% higher). Admin. Off. of U.S. Courts, *Federal Court Management Statistics—Profiles* (Sep. 30, 2022) (available at <http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2022/09/30-1>).

More importantly, this bench of the Court has a record of prompt and efficient disposition of cases assigned to it. As of the most recent reporting date, it had no motions pending greater than six months and no cases pending longer than three years. The same cannot be said for the district courts in Austin, where the active judges average 12.5 three-year cases and 2 six-month motions—or those in the District of Columbia, where the averages are 21.4 three-year cases and 11.2 six-month motions. *See* Admin. Off. of U.S.

Courts, *Civil Justice Reform Act Report*, Tables 7 & 8 (Mar. 31 2022).<sup>1</sup> Finally, the history of *Texas MPP* makes the efficiency and expedition of this bench of this Court undeniable. Accordingly, this factor weighs strongly against any requested transfer.

**2. This case presents a local issue to the Amarillo Division that is appropriate to decide here.**

This factor asks whether there is “a relevant factual connection between the events and the venue” and “those actually affected—directly or indirectly—by the controversies and events giving rise to a case.” *Volkswagen II*, 545 F.3d at 318; *LeBlanc v. C.R. Eng., Inc.*, 961 F. Supp. 2d 819, 832–33 (N.D. Tex. 2013). Because this case focuses on a federal policy with nationwide effects, it is not tied closely to any one district or division.

But that does not mean the dispute is removed from Amarillo. The Defendants’ unlawful adoption of the challenged rule directly affects the Northern District generally and the Amarillo Division in particular. One of the plaintiffs lives here. This district and division include large numbers of retirees and working participants in retirement plans who will be harmed if investment advisers are no longer constrained by the fiduciary standards of ERISA. Those standards have long required that funds be managed solely for the “exclusive purpose” of maximizing investment return for the beneficiaries but under the 2022 Rule, investment managers could *also* pursue environmental and social goals of the federal government or of the investment managers. This “renders ‘less solid’” the benefits to those participants in the Northern District and this division and increases the risk those participants face—subjects them to an injury-in-fact that they will suffer in this district and division. *See* ECF 47 ¶¶ 58–59, 62 (citing *Johnson v. Allsteel, Inc.*, 259 F.3d 885, 888 (7th Cir. 2000) and 13 Wright & Miller § 3531.4).

Moreover, the Northern District and the Amarillo Division are home to large numbers of companies and individuals engaged in the oil and gas industry; the ranching and cattle

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<sup>1</sup> Removing Judge Kollar-Kotelly, who oversees more than one multidistrict-litigation matter, from the calculation changes those numbers to 16.6 cases and 11.1 motions.

feeding industry; the agricultural, fertilizer, and pesticide industries; the chemicals industry and many other fully lawful pursuits that are viewed less favorably for investment by “ESG” funds and investment managers. The current and future livelihoods of these companies and individuals depend on continuing access to investment capital. Yet the challenged rule will reduce the availability and increase the cost of that investment capital, to the detriment of the people of this division whose jobs and futures depend on it.

The Amarillo Division will likely be more adversely affected by the Defendants’ unlawful actions than many other areas of the United States. Both the direct and indirect effects will cause measurable injury here. The people of this division have an interest in having the matter resolved in this division that is, at the very least, no less tangible than any other venue the Defendants have proposed. At worst, this factor is neutral.

**3. The Court is familiar with the governing law.**

The Defendants do not assert that the federal judges in Austin or the District of Columbia have greater familiarity with the governing law than does the Court. The applicable law will overwhelmingly be ERISA and the APA. Every federal district judge is presumed to be familiar with and equally capable of interpreting federal law. *See, e.g., Mateos v. Montemayor*, 919 F. Supp. 2d 817, 825 (W.D. Tex. 2013); *Hidden Values, Inc. v. Sandoval*, No. 3:09-cv-34, 2009 WL 10677477, at \*6 (N.D. Tex. June 26, 2009). Further, *Texas MPP* makes it clear that the Court has recent, deep familiarity with many of the legal issues under the APA that will be presented in this case. This factor weighs against transfer.

**4. There are no conflict-of-law problems.**

Federal law governs this case. No one suggests otherwise. This factor is neutral.

\* \* \*

The private interest factors and public interest factors are all either are neutral or weigh against any transfer of this case. The motion should be denied

### **III. Defendants’ attempt to shop for a different judge must be rejected.**

If Defendants believe this Court is biased or prejudiced against them or cannot be impartial in this case, they should move to recuse. They should not attempt to smuggle such an accusation through the device of a § 1404(a) motion, which “was not designed to narrow the plaintiff’s venue privilege,” but to “counteract the inconveniences that flowed from the venue statutes by permitting transfer to a convenient federal court.” *Van Dusen v. Barrack*, 376 U.S. 612, 635 (1964).

The Defendants claim that it is in “the interest of justice” to transfer this case because not doing so would harm the public interest in the fair administration of justice. They do not suggest that the Court is biased against them or has prejudged the case. Indeed, the Department of Justice admitted at a recent hearing on a similar motion to transfer, there is no question that justice will be administered fairly—that is, that the public interest will be satisfied. Rather, “[i]t’s really a perception issue,” and the perception is not “about any of the judicial officers’, who get these cases, reputations. . . .” Exh. A, Mot. Hrg. Tr. 34:2–3, 38:21–24, *Texas v. U.S. Dept. of Homeland Security*, No. 6:23-cv-7 (S.D. Tex. Feb. 21, 2023). The Defendants’ transfer attempts are “about how [the federal government] think[s] the State . . . are conducting themselves and how that is being perceived at large. . . .” *Id.* 41:15–17. In short, their putative concern is not the public’s perception of unfairly administered justice, their “perception issue is: Why is Texas doing this?” *Id.* 77:13–14.

The Defendants’ concern, in other words, is forum shopping. But “forum shopping” arguments have “no real relation to the interest of justice analysis unless [an] alternative motion,” such as for recusal, “has merit”—and such a motion is meritless if the defendants “do[] not alleg[e] that the assigned presiding judge is biased in favor of the Plaintiffs[.]” *James v. Experian Info. Sols., Inc.*, No. 3:12-cv-902, 2014 WL 29041, at \*5 (E.D. Va. Jan. 2, 2014). That is because forum-shopping concerns, particularly in the Fifth Circuit, are already rolled into the transfer analysis already by giving the plaintiff’s choice of forum no weight of its own and simply holding the defendant to § 1404’s burden to show “good

cause” for transferring the case—that is, by requiring the defendant to show that another permissible venue is clearly more convenient. *Volkswagen II*, 545 F.3d at 315 (quoting *Humble Oil & Refining Co. v. Bell Marine Serv.*, 321 F.2d 53, 56 (5th Cir. 1963)). See also *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008) (under Fifth Circuit precedent, “plaintiff’s choice of venue corresponds to the burden that a moving party must meet” under § 1404).

It is not for the Defendants, part of the Executive Branch, to upset the venue amendments Congress passed expressly to give plaintiffs ability to challenge Executive Branch actions in courts all over the nation—not only in the District of Columbia, where venue had been almost mandatory. Cf. *Minn-Dak Farmers Co-op. v. Espy*, 851 F. Supp. 1423, 1425 (D.N.D. 1994) (requiring “each and every plaintiff with a cause of action against a governmental officer located in Washington, D.C. to travel to that city to plead his or her case . . . would exalt the federal officer or employee above the citizens he is bound to serve”). Nor is it for them to upset the authority Congress delegated to each district court’s chief judge to “divide the business and assign the cases” if the “court [has] more than one judge.” 28 U.S.C. § 137(a).

The Chief Judge of the Northern District of Texas has assigned 100% of the cases filed in the Amarillo Division to this bench of the Court. Such orders, and single-judge divisions themselves, are not unusual; indeed, single-judge districts long were the norm.<sup>2</sup> There was and is nothing sinister, harmful, or contrary to the “public interest” about single-judge divisions then, and there is nothing with them—or filing or maintaining this suit in one of them—now.

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<sup>2</sup> “The Judiciary Act of 1789 provided for a single district court judge in each state. . . .” Erwin C. Surrency, *Federal District Court Judges and the History of Their Courts*, 40 F.R.D. 139, 150 (1967). Each of Texas’s federal district initially had a single judge. *Id.* at 286–88.

**CONCLUSION**

The Plaintiffs respectfully request that the motion to transfer venue be denied.

Dated February 28, 2023.

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**CERTIFICATE OF SERVICE**

On February 28, 2023, this document was filed through the Court's CM/ECF system, which serves it on all counsel of record.

/s/ Leif A. Olson

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

	)	
THE STATE OF TEXAS, ET AL.,	)	
Plaintiffs,	)	
VS.	)	CIVIL ACTION NO.
	)	6:23-CV-07
U.S. DEPARTMENT OF HOMELAND	)	
SECURITY, ET AL.,	)	4:07 P.M.
Defendants.	)	
	)	

MOTION HEARING  
BEFORE THE HONORABLE DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE  
FEBRUARY 21, 2023

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
produced by computer.

1 So -- and this really is more about making  
2 it -- because most -- it's mostly lawyers, right? It's mostly  
3 the lawyers that are going to show up, and a handful of  
4 witnesses for both sides, and so, like I said, I will defer to  
5 the parties. I am regularly in all three courthouses. So...

6 **MR. REUVENI:** I will -- I will make it a point to  
7 confer on that, as well, with Mr. Olson.

8 **THE COURT:** Okay. Then let's transition to the motion  
9 to transfer. As I said, I've read the motion, the response, and  
10 the reply.

11 So with that in mind, Mr. Reuveni, it's your motion.  
12 You can go ahead.

13 **MR. REUVENI:** Thank you, Your Honor. May it please  
14 the Court, I'll get right to it.

15 So at bottom, this case, more than, we think, any of  
16 the other cases that Texas and other plaintiffs have filed  
17 against the United States and cases involving national  
18 immigration policies and just national policies, generally, has  
19 absolutely no connection to the Victoria Division. It -- it has  
20 connections to other places. It has a connection to Austin,  
21 which is where Texas -- the Texas capital is. It has  
22 connections to DC, too, where this policy was promulgated and  
23 equipped and primarily being implemented.

24 As you see from our declaration, it has connections to  
25 a number of divisions, many divisions, in fact,

1 both -- mostly -- well, Houston has -- one out of two of the  
2 individuals that applied and had the application granted are in  
3 Houston. Many others are in other much larger metropolitan  
4 areas and smaller cities and towns, but none of them are here in  
5 Victoria. And so, at bottom, there's just really no connection  
6 whatsoever.

16:55:40 7 Now, look, we've made this about plaintiffs' practices  
8 over the past two years, and we lay that out in our brief. I  
9 don't need to get into it unless there are questions about it.  
10 There are 28 cases, 18 in divisions that the assignment of the  
11 judge is a preordained conclusion, and other -- the other ten  
12 divisions where it's very likely that plaintiffs will be able to  
13 know in advance who they are likely to have as their judge.

16:56:08 14 And one, two, ten of these -- I don't know what the  
15 cutoff is, frankly, like where it starts to raise questions, but  
16 we're here in case number 28, and we think, of all the cases  
17 that we've listed there in Exhibit A in our reply, this  
18 one -- this is the one where we have to put our foot down  
19 because this is the one where there really is no connection  
20 whatsoever.

16:56:30 21 And I don't want to -- I don't want to suggest that  
22 any of these other cases, that we concede venue. Venue can be  
23 waived. It doesn't mean we agree there was venue there.

16:56:37 24 But in these other cases you might argue -- for  
25 example, in the ICE pri- -- priorities case before Your Honor,

1 that maybe -- I think plaintiffs had evidence there some  
2 detainers were lifted, and some of them may have even been  
3 lifted in the Victoria Division. So there was some arguable  
4 connection, something, and here there just is nothing.

16:56:56 5 I mean, we went ahead and looked at the numbers, and  
6 we have this declaration in front of you for a reason. We think  
7 it's pretty compelling evidence that there's just absolutely no  
8 connection to this jurisdiction. I think it's telling -- or  
9 division, I should say.

16:57:07 10 I think it's telling that even in their motion,  
11 plaintiffs don't invoke the, quote, substantial connection prong  
12 of the venue analysis whatsoever. They -- it was -- concedes  
13 the point in my mind. They just raise residency.

16:57:22 14 We have arguments on residency where we don't think  
15 they're a resident here, but I know they've pointed to cases  
16 that go the other way. But you don't have to decide that issue  
17 to rule in the government's favor here. Whether they're a  
18 resident here or not is really beside the point. I think, most  
19 importantly, the Court can and has discretion, under the  
20 interest of justice prong of the transfer analysis, to transfer  
21 to a case [sic] that is more appropriate where, as here, there's  
22 just simply no explanation, not in the papers.

16:57:54 23 I'm eager to hear what Mr. Olson has to say. I'm  
24 happy to be proven wrong, but I have seen nothing in the papers  
25 so far explaining why we are here in the Victoria Division. The

1 best thing I have heard -- or the only thing I have heard is  
2 where plaintiffs' papers contend while there's no substantial  
3 connection to this venue, that there is -- this is a local  
4 controversy local to Victoria.

16:58:18 5 And as I understand their argument, because some  
6 people may cross the southern border under this program, they  
7 may make their way through -- to Victoria because there is a  
8 highway that runs through here on the way to Houston, and  
9 another one that runs here elsewhere -- I apologize. I don't  
10 recall exactly where -- and people may come through; they may  
11 travel through Victoria. Some of them may even stop here. Some  
12 of them may eventually reside here. That's the crux of what is  
13 the local controversy in Victoria.

16:58:47 14 And a couple problems there. I mean, that  
15 fundamentally misunderstands how this program works. This is  
16 not a program that takes place at the southern border.

16:58:57 17 Nobody is paroled into the country at the southern  
18 border. So the whole -- the speculation that plaintiffs raise  
19 as to how they may be coming here to Victoria is -- is just --  
20 not just speculation, but wrong. This is a program that is  
21 designed to ensure nobody arrives at the southern border under  
22 this program. Its goal is to, as we lay out in the papers,  
23 alleviate congestion at the southern border.

16:59:19 24 And so beneficiaries are required to travel to an  
25 internal port of entry at an airport -- international airport.

1 I don't believe -- I want to be careful here because I'm not  
2 certain of this, and so it's not in our declaration, but I don't  
3 believe that Victoria Regional Airport is an international  
4 airport. So nobody, through these programs, is flying directly  
5 into Victoria on these programs.

16:59:42 6 Houston, San Antonio, Dallas, Fort Worth, many others,  
7 no doubt, here and elsewhere in the country -- but these are all  
8 places with international airports, and Texas has not filed  
9 there, nor has Texas filed in a border jurisdiction where they  
10 say, in their understanding of how the program works, the  
11 initial harm that they view as occurring is likely to arise. No  
12 one's filed in Brownsville. No one's filed in McAllen. No  
13 one's filed in El Paso, et cetera.

17:00:10 14 And then the numbers we laid out in our declaration  
15 are really one out of two -- 1,466 out of 2,700-plus  
16 individuals -- applicants, I should say, who have had their  
17 applications granted are tied to Houston. So this is -- of all  
18 the places in Texas, that is the most logical --

17:00:30 19 *(Unidentified speaker; indiscernible.)*

17:00:30 20 **MR. REUVENI:** Oh, was there -- was there a question?

17:00:33 21 **THE COURT:** Yeah, I think somebody doesn't have their  
22 phone muted. If we could get everyone who -- except for  
23 Mr. Reuveni and Mr. Olson to mute their phones, I would  
24 appreciate it.

17:00:45 25 Go ahead, Mr. Reuveni.

17:00:47 1           **MR. REUVENI:** Thank you, Your Honor. I was just  
2 saying that of all the places, given the data we have, given the  
3 declaration, given the allegations in the complaint, which I  
4 understand to be: Texas and others believe that they will face  
5 harm in locations where the individuals in question or  
6 beneficiaries of these programs will end up.

17:01:04 7           I will quibble a bit and disagree with (indiscernible)  
8 on their suggestions that these individuals are likely to commit  
9 crimes or become wards of the state or otherwise cause harm to  
10 the state. That's a separate issue for when we get into  
11 standing down the line, should we get there, but in terms of  
12 their actual allegation that some subset of these individuals  
13 will end up in specific locations in Texas, and, therefore,  
14 there is a localized connection to those places in Texas, there  
15 are at least 20 other divisions that have a greater argument to  
16 a connection.

17:01:35 17           There are maybe three other ones that have zero  
18 applicants -- or beneficiaries, I should say, from our data, and  
19 then there are at least 24 other locations that have some  
20 greater connection because people are actually -- the people  
21 applying for these application -- for these benefits are  
22 actually there right now.

17:01:53 23           And I want to make one thing clear. I don't think  
24 this -- something Your Honor -- you had asked earlier, just to  
25 be sure what our data is and is not saying. Our data is not

1 saying that every single individual counted and attested to in  
2 the declaration says they are going to these locations. We  
3 don't have that information.

17:02:10 4 What the data is saying that the bene- -- the  
5 applicants who apply on behalf of these individuals, who are  
6 either sponsors and are financially responsible for them once  
7 they come to the United States, are in those locations, and then  
8 our declaration says, essentially, many, but -- we can't predict  
9 with certainty that all, but many of these individuals are most  
10 likely going to end up close to where their sponsors are, for  
11 obvious reasons. But I want to be sure that I'm not  
12 misrepresenting. We're not saying that actual people who are  
13 the beneficiaries of these applications are in Houston, in  
14 San Antonio, in El Paso, not in Victoria, et cetera.

17:02:49 15 It's the applicants who are applying on their behalf  
16 to be their sponsor, that's the data we do have. But,  
17 nevertheless, this is the evidence in the record. What's not  
18 here is any evidence from either side that anyone is going to  
19 end up here -- or is presently in, I should say, in Victoria or  
20 likely to, given the data we do not have, end up in Victoria.

17:03:10 21 So that's really the crux of it. We have now 28 of  
22 these cases, and I just counted this up before the hearing. It  
23 looks like there's 28 divisions in Texas. I can understand  
24 Texas taking the position that, We reside everywhere in the  
25 state, but they don't file these cases in divisions that have

1 the most logical connection to the state.

17:03:31 2 Again, every major metropolitan area -- I mean, I  
3 think it's pretty well-known that's where the largest immigrant  
4 populations are; that these cases aren't getting filed there.  
5 We're not in the border division. We're not in the larger  
6 divisions here in Texas.

17:03:46 7 And I know Your Honor knows this from a few of the  
8 other cases that have been filed in front of you. You'll  
9 recall, for example, the border wall case. So here's an example  
10 of where a division -- divisional -- division assignments end up  
11 with, potentially, a preordained judge in the other case, and we  
12 have no issue with that whatsoever. I believe it was a  
13 subagency of Texas filed suit in the McAllen Division, and there  
14 was random assignment, and it ended up in front of whoever it  
15 ended up. If Texas had initiated that suit itself in the  
16 McAllen Division, we'd have no quarrel. That's where the wall  
17 was contracted to be built. That's where the connections to  
18 that case are.

17:04:23 19 Texas came in and, sometime later, filed here in  
20 Victoria, and Your Honor ultimately transferred the case to  
21 McAllen because that's where everything relevant to that case  
22 was -- had occurred. And I want to be clear here: Our position  
23 is not, as Texas suggested in its brief, that there's anything  
24 inherently suspect with single-judge divisions or divisions  
25 where the division of work, as assigned by the chief judge, is

1 going to be -- where it's likely some judges are more likely to  
2 get cases than others.

17:04:52 3           There are many instances in which a case should -- can  
4 and should be heard locally in a division, even if it's a  
5 single-judge division where it arises. This case is just not  
6 one of them, particularly after we have a course of conduct  
7 28 cases long going back two years. This case has no  
8 connections at all, and I -- I'm very curious to hear  
9 what -- what the connection to this venue is.

17:05:17 10           I'd be happy to hear something that I have not -- we  
11 have not briefed, but that, to us, is the crux of the issue, is  
12 does the -- does the division have any connection, let alone a  
13 substantial connection, as required under the venue statutes to  
14 the division in question? And if it doesn't, you know, one  
15 time, all right, fine. Doesn't necessarily raise any questions.  
16 Five times -- we're at time 18 for single-judge divisions, and  
17 time 28 for just divisions that have no logical connection to  
18 the underlying case.

17:05:48 19           And, again, I know we haven't filed these until  
20 recently, but this case, more than any that I can think of,  
21 given how the program works; given where the individuals are  
22 likely to end up; given where the government entities that are  
23 responsible for the program; given where Texas is alleging it  
24 experiences its harm; and to -- those agencies are likely to be  
25 all based out of Austin, the larger municipalities, there's just

1 no logical connection here whatsoever.

17:06:14 2 And so I know -- we lay this out in the brief. It's  
3 really a perception issue. I mean, you're going -- you keep the  
4 case; we'll proceed to trial. We know we're going to get a fair  
5 trial, and we'll live with the verdict one way or the other.  
6 When Texas suggested this is a backdoor motion to recuse, that's  
7 just -- we reject that. We have no issue with any of the judges  
8 in the Southern District or anywhere else in Texas. That's not  
9 what this is about. It's really a perception issue where it  
10 just seems to us, the U.S. Government, that case after case is  
11 getting filed in places that make no sense in terms of how the  
12 venue statute works and raises just this question.

17:06:51 13 And we know it's not just asking this. Not -- no less  
14 than -- the chief justice, Justice Gorsuch, Justice Kagan -- and  
15 we cite those references in our brief. There was a year-end  
16 report from the chief justice pursuant to the patent docket.  
17 Justice Kagan, in -- in recent oral argument raised the issue  
18 with respect to another -- another case that arose out of the  
19 Southern District, and Justice Gorsuch raised the same issues  
20 during the last administration when we were -- when we saw  
21 similar events happening from the other side, although, to be  
22 clear, not to the extent that Texas has now been filing  
23 single -- case after case in front of single-judge divisions.

17:07:29 24 And so it's a perception problem. There's a huge  
25 conversation happening right now about it, and it just -- to us

1 it seems, given how there is no connection whatsoever to this  
2 venue, that the thing to do is to transfer the case to a  
3 location where it has an actual -- where the case actually has  
4 an actual connection; where the harms alleged are actually going  
5 to be felt; or to a location where the policies are promulgated,  
6 are to be implemented, or to where the witnesses will be.

17:07:58 7 And so as we lay out in our brief in great detail,  
8 that's Austin or DC. But even if you find that Texas is  
9 resident in every division in the state, we don't -- this or any  
10 other division, particularly given the numbers elsewhere in the  
11 Southern District and other divisions, this is not that  
12 division.

17:08:17 13 And so unless there are any questions, Your Honor, I  
14 think that's about all I have to say. I'd request I get just a  
15 short, short rebuttal, if possible, depending on what Mr. Olson  
16 has to say.

17:08:27 17 **THE COURT:** Absolutely. I'll let both sides talk as  
18 much as they want to. I'm famous for letting -- that's why it  
19 went nine or ten hours that day when we had our close.

17:08:36 20 You did mention the case about the border wall. There  
21 were actually a couple of cases that were filed in the Victoria  
22 Division. You talked about the fact that I transferred that  
23 case, and I did that sua sponte.

17:08:48 24 There was -- there was a previously filed case in  
25 McAllen that dealt with the same subject matter, and

1 it -- you're right. I believe it was the Texas land  
2 commissioner had previously filed a case in McAllen, which is  
3 further along, and, you know, after conferring as we do -- the  
4 judges do, I transferred it sua sponte.

17:09:10 5 There was another case, a Title 42 case, that was  
6 filed in my court, and Judge Summerhays had that case in  
7 Louisiana, and I stayed my case and said that, you know, I was  
8 thinking about transferring it. So that was, you know, another  
9 immigration-related case that -- and, ultimately, I think that  
10 the plaintiffs -- Texas wound up dismissing that case and maybe  
11 joining the one that was in Louisiana.

17:09:37 12 But those are a couple of cases where, you know, there  
13 were other pending matters within the Fifth Circuit that it just  
14 didn't make sense, to me, because, you know, you don't want two  
15 different cases going at the same time. Those were first filed.

17:09:52 16 So I guess, Mr. Reuveni, what I was asking is, you  
17 know, that doesn't really look like a judge who's trying to grab  
18 hold of every immigration case and hang onto them, just that  
19 national policy, right?

17:10:03 20 **MR. REUVENI:** No, it doesn't. And to be clear, that's  
21 not, again, what we're suggesting. And the -- the border wall  
22 case is the one that I brought up, and the only point I was  
23 trying to make there is -- and this was directed at plaintiffs  
24 here, not to you, Your Honor, is that their own  
25 subdivision -- or subagency, I should say, filed suit in what is

1 the most logical venue, the McAllen Division, where the wall at  
2 issue was supposed to be built, and then Texas -- the Texas AG's  
3 office goes and files, some time later, in the Victoria  
4 Division.

17:10:33 5 And you -- you transferred it because that was the  
6 first-filed case. That's clearly the reason, but I'm only  
7 pointing it out as a data point, that here we have their own  
8 agency filing it in what is the most logical location, and then  
9 the AG's office coming in and saying, Wait a second. We're  
10 going to file it over here in a place that, pretty clearly, has  
11 far less of a connection to it than where it was actually  
12 supposed to be constructed. That's the only point I was trying  
13 to make --

17:10:58 14 **THE COURT:** Okay.

17:10:59 15 **MR. REUVENI:** -- just to paint a picture, out of all  
16 28 of the filings, to suggest, you know, maybe one or two is not  
17 enough; maybe ten is not enough; but 28 is certainly enough in  
18 our view.

17:11:07 19 **THE COURT:** Right. And so you said after -- after  
20 that, it starts to raise questions. What questions does it  
21 raise?

17:11:15 22 **MR. REUVENI:** It's a perception problem.

17:11:16 23 **THE COURT:** What --

17:11:17 24 **MR. REUVENI:** It's a perception problem.

17:11:18 25 **THE COURT:** What is that perception?

17:11:19 1           **MR. REUVENI:** The perception is that Texas --  
2 plaintiffs who engage in this pattern of practice and file only  
3 in a handful -- I think seven out of 28 of the divisions in the  
4 state -- are doing that for a reason, and then it puts you,  
5 Your Honor, in an awkward position because now, like you just  
6 said -- you just said to me -- like, you said to me, like, Look,  
7 I'm not holding onto immigration cases, and that's not what I'm  
8 suggesting.

17:11:42 9           That's not what the DOJ is suggesting, but it casts  
10 this cloud over the whole proceeding where your ICE priorities  
11 case, your -- which, you know, the decision you issued last year  
12 was up to the Supreme Court. You've got a justice of the  
13 Supreme Court questioning the value of very careful and detailed  
14 factual findings that you've done in that case, and that's to  
15 say nothing about the merits of it. That's to say this whole  
16 habit of that -- and pattern that the State is engaged in, it  
17 just casts a pall on everything. And so now we have justices of  
18 the Supreme Court questioning the hard work of the lower courts,  
19 and then we have the public asking: Why is Texas filing in  
20 these -- in these -- only these specific divisions?

17:12:22 21           So, again, this has -- we are not suggesting anything  
22 about any of the judicial officers', who get these cases,  
23 reputations. We are not moving to recuse. I want to be very  
24 clear about that. That's not what this is about.

17:12:34 25           To us, it's that once Texas starts doing something

1 often enough and you get this sort of why here, why this, when  
2 there's no connection, questions are raised. And so I think  
3 that we cite a number of cases -- I know I'm being a little bit  
4 less precise than you might like, but I -- we cite a number of  
5 cases out of the Fifth Circuit that sort of -- don't articulate  
6 what the line is, but they say when you see this sort of  
7 behavior, when you see there being no logical connection to the  
8 venue in which the case is filed -- and so the plaintiff loses  
9 their sort of presumption that they can file in the venue of  
10 choice there.

17:13:08 11 And you see it happening over and over and over, it  
12 does raise the question of: Why is this particular plaintiff  
13 choosing this handful of particular venues to file their  
14 lawsuits? That's it. That's what we mean by "raising  
15 questions."

17:13:23 16 **THE COURT:** Okay.

17:13:24 17 **MR. REUVENI:** Question --

17:13:25 18 **THE COURT:** Like I said, in your briefing you said  
19 there's a perception issue. What is the perception? That  
20 you're -- so the State of Texas is picking the Victoria Division  
21 because...

17:13:37 22 **MR. REUVENI:** Well, not just the Victoria Division,  
23 but, yes, let's focus here because here's where we are.

17:13:41 24 They're picking the Victoria Division because they  
25 think that they're likely to get a result that they want in the

1 case. And so that's not to say that you are, in fact, going to  
2 do that, or any other jurist who is presented with this sort of  
3 set of events is going to do that, but that's the perception,  
4 that they think they can go and handpick their judge, and that  
5 they're likely to get the result that they want.

17:14:06 6 And that's a perception as to the courts; that's a  
7 perception as to the fairness of the proceedings; and that's a  
8 perception all the way up to the Supreme Court where we now have  
9 justices of the Supreme Court saying, Okay, I mean, you filed,  
10 and you have this habit of filing this way, so I'm not going to  
11 give any credence to the factual findings that the district  
12 court made. That's no way, really, to --

17:14:26 13 **THE COURT:** Do you share that perception?

17:14:30 14 **MR. REUVENI:** Do I share the perception that  
15 Texas -- that I just described? Yes. I wouldn't have signed  
16 this brief --

17:14:35 17 **THE COURT:** No, no, no, no. I'm saying: Do you share  
18 the perception that Texas has gotten -- Texas is picking me  
19 because they think that I'm going to rule in their favor? Do  
20 you share that perception? Do you think that -- do you think,  
21 starting off right now, that -- that I'm already going to rule  
22 against the United States?

17:14:56 23 **MR. REUVENI:** No. I don't -- I do not -- I cannot  
24 say -- I cannot say whether we believe that you will rule  
25 against us. I said -- what I can say is Texas believes you will

1 rule against the United States.

17:15:06 2 **THE COURT:** So that perception is not one that you  
3 share, then?

17:15:08 4 Because you've said you're not moving to recuse. If  
5 you thought that I couldn't be fair, then I would expect a  
6 motion to recuse.

17:15:19 7 **MR. REUVENI:** We're not filing a motion to recuse. We  
8 do not --

17:15:22 9 **THE COURT:** That's not what I asked. That's not what  
10 I asked. My question to you is if you don't think that I can be  
11 fair, then I would expect a motion to recuse. You would --  
12 that, You can't be fair, Judge.

17:15:32 13 **MR. REUVENI:** Right. But we don't -- that's not what  
14 we think, Your Honor. This is not about Your Honor, and this is  
15 not about -- this is not about Your Honor. This is about how we  
16 think the State -- plaintiffs -- the State of Texas are  
17 conducting themselves and how that is being perceived at large  
18 in the legal community; within DOJ; within other legal circles;  
19 within, again, the Supreme Court itself, which is questioning  
20 the -- the -- like, the value of the findings of fact and  
21 conclusions of law it's getting in these proceedings.

17:16:03 22 I know I'm dancing a delicate dance here. I don't  
23 want to be cute --

17:16:09 24 **THE COURT:** No. What I'm -- what I want is for you to  
25 be candid. I've got thick skin. Lord knows I better.

17:16:14 1 And so my question is -- I just want to find out:

2 Does the United States think that I can be fair and impartial?

17:16:21 3 **MR. REUVENI:** The United States thinks Your Honor can  
4 be fair and impartial. That is why we are not filing a motion  
5 to recuse. And I want to be clear: We didn't ask you to kick  
6 the case somewhere where it's impossible to come back to. At  
7 the time we filed the motion, I believe you were getting cases  
8 in the Corpus Christi Division.

17:16:36 9 **THE COURT:** That's right.

17:16:37 10 **MR. REUVENI:** And one thing we suggested was the  
11 cases -- this be transferred there before any of the other  
12 locations because we were clear we don't think the problem is  
13 whether Your Honor's impartial or not. We don't think the  
14 problem is whether we're going to get a fair trial or not.  
15 We -- to repeat myself, we do not think that. But we did not  
16 move to transfer the case only to places where it would be  
17 impossible for you to get the case again by random assignment.

17:17:02 18 Our only point is that an absolute random assignment  
19 and the repeat pattern of plaintiffs in filing in these single-  
20 or almost single-judge divisions, it just raises a pall over  
21 everything, and it just -- it raises: Why is Texas doing this?  
22 Why are they filing here? Why are they not filing in the  
23 capital? Why are they not filing in Houston where one of ten  
24 judges has a 1 in 12 percent chance of getting the case? Why  
25 are they not filing where they say the harms are occurring?

17:17:28 1 All of this adds up --

17:17:30 2 **THE COURT:** Okay.

17:17:30 3 **MR. REUVENI:** -- to a question of -- to us, it seems  
4 like they're putting you in this position, as well. Like, this  
5 is not fair to the judiciary as a whole. It raises questions  
6 about individual judges. It adds work to individual judges. It  
7 gives specific immigration cases to three or four judges when  
8 there should be random assignments. And that all -- as we've  
9 laid out in -- more in the brief is just something that, under  
10 the interest of justice, the Court can and should make an effort  
11 to push back on.

17:17:58 12 **THE COURT:** Okay. All right. I appreciate that.

17:18:00 13 Mr. Olson?

17:18:06 14 **MR. OLSON:** Your Honor, the interest of justice  
15 (indiscernible) --

17:18:07 16 **THE REPORTER:** Your Honor, I'm not able to --

17:18:11 17 **THE COURT:** Yeah. Mr. Olson, we're having a little  
18 bit of a problem hearing you. Your sound is not as clear as  
19 Mr. Reuveni's was. I don't know if you've got a microphone  
20 issue, or if you can get a little closer to it, maybe.

17:18:22 21 **MR. OLSON:** I can get a little closer --

17:18:24 22 **THE COURT:** That's better. That's good.

17:18:26 23 **MR. OLSON:** I am used to people telling me that I'm  
24 being too loud, and I need to hush up, Your Honor. So I  
25 apologize for giving you the opposite problem.

17:18:39 1 The public interest is simply full and fair  
2 adjudication of the case, and the standard is whether or not a  
3 reasonable person would believe that the case is not being heard  
4 impartially. There is no suggestion here that that is the case,  
5 and what I heard from Mr. Reuveni is why does Texas, why does  
6 Texas, why does Texas, why does Texas. These are not concerns  
7 about the state of the federal judiciary. These are concerns  
8 about the attorney general of Texas, and if the attorney general  
9 of Texas wants to take a political (indiscernible) for filing  
10 cases in particular divisions, for whatever reason -- he's an  
11 elected official. If people get upset about that, they'll turn  
12 him out. And if he is bringing cases that aren't fit to be  
13 brought, those cases will be booted out of court either by the  
14 district judge, who will sit alone in a single division, or by  
15 the Fifth Circuit on appeal.

17:19:48 16 There has been no suggestion that that has been a  
17 problem, that Texas is either choosing divisions where judges  
18 frequently make mistakes that require correction above or that  
19 Texas is choosing judges who have already prejudged the merits  
20 of the case.

17:20:15 21 I -- I don't envy Mr. Reuveni's position here. I know  
22 that the Department of Justice has -- has its own institutional  
23 interests and -- regarding how cases should be assigned. That's  
24 all, but that runs up against the standards that Congress has  
25 set forth in the statute. Is this a proper place for Texas to

1 file? Yes. Texas resides in this division.

17:20:59 2 Did the federal government show that in other  
3 divisions is clearly more convenient for the parties and the  
4 witnesses? No, it did not. The statistics that Mr. Reuveni  
5 points to were brought up in the reply brief. Had that been  
6 brought up in the opening brief, Texas would have loved to have  
7 addressed it. It was not.

17:21:23 8 There was no identification of potential witnesses.  
9 There is no identification of potential evidence other than the  
10 location of the administrative record, which (indiscernible)  
11 acknowledge will be filed in ECF and is available to anybody who  
12 has access to a computer terminal, or at least a computer  
13 terminal that has access to the Internet.

17:21:42 14 I will be quite frank, Your Honor. I don't know why  
15 our office chooses to file in seven divisions over and over.

17:21:57 16 **THE COURT:** I'm having a hard time -- I didn't pick up  
17 that last statement. What did you say?

17:22:01 18 **MR. OLSON:** Sorry, Your Honor. I -- to be honest, I  
19 don't know why our office files in some divisions over others.

17:22:07 20 **THE COURT:** Well, I was going to ask you that  
21 question. Why are you filing in Victoria?

17:22:13 22 **MR. OLSON:** The case is being filed in Victoria, quite  
23 frankly, Your Honor, because of our experience with you; because  
24 we know that you know these statutes; we know that you give them  
25 very close and detailed attention; and our office knows how you

1 run a courtroom. So we are able to prepare our (indiscernible)  
2 for trial and will be much more efficient than if it were  
3 randomly assigned to another judge.

17:22:45 4 **THE COURT:** Okay.

17:22:51 5 **MR. OLSON:** The long and short of it, Your Honor, is  
6 that the public interest is served by having the case decided  
7 fairly and quickly. That is available in the Victoria Division.  
8 The federal government does not meet the burden to show that  
9 another division was merely more convenient for the parties and  
10 the witnesses; it has shown that there are other districts and  
11 divisions where Texas could have chosen to file this suit, but  
12 it didn't. It filed it here, and here is where we should stay.  
13 Thank you.

17:23:26 14 **THE COURT:** All right. Mr. Reuveni, did you have any  
15 rebuttal? I've got questions. So you're going -- both of you  
16 are going to get a lot of chances to talk, but I want -- you  
17 asked for the chance to rebut?

17:23:37 18 **MR. REUVENI:** Yeah. Yes, Your Honor. Thank you.

17:23:38 19 Do you have questions for me or questions for  
20 Mr. Olson? I'm happy to wait, if you have questions for him.

17:23:43 21 **THE COURT:** No, no. I don't want to disrupt  
22 your -- what's fresh in your mind from what you just heard.  
23 I've got questions for both of you for sure. So...

17:23:52 24 **MR. REUVENI:** Okay. I just have a -- two or three  
25 points here. I just -- again, I -- when I hear, "I don't know

1 why we file in one division over another," that's not much of an  
2 answer. And this leaves me with a question that I started with  
3 and that is repeated again and again in our brief: Why are we  
4 here? Why Victoria?

17:24:11 5 This, of all cases, because this -- this case --  
6 putting aside residence, which we -- which we disagree with,  
7 but, again, if you find that Texas is resident in every  
8 division, still, the purpose of venue -- the venue statute is  
9 supposed to put cases where they have the most logical  
10 connection to. And so there's a limit on a plaintiff's ability  
11 to pick and choose where they file, and I think -- we cite the  
12 case in the brief -- I think plaintiffs did, too, because it's  
13 the Fifth Circuit's most authoritative writing on the issue, but  
14 in the *Volkswagen* -- *In Re Volkswagen* case of 2008, the court  
15 was very clear: If there is no connection to the underlying  
16 venue, then any presumption that the state gets -- or the  
17 plaintiff, I should say, gets in filing there for a valid reason  
18 or being connected there is out the window.

17:25:05 19 And I've seen nothing and I've heard nothing that  
20 explains why, in this case -- not any other case. In this case,  
21 putting aside everything else that we've said about single-judge  
22 divisions and forums and where cases -- where they file their  
23 cases -- in this case, putting all that aside, I have no idea  
24 why they are here. I have not heard what is the possible  
25 connection to this jurisdiction other than what Mr. Olson just

1 said, which is they like that Your Honor moves cases quickly.

17:25:33 2 I mean, other judges move cases quickly, too, and I --  
3 you know, that's -- if Mr. Olson's only problem with this  
4 case -- with venue here -- or the only reason he's here, I'm  
5 happy to stipulate to a trial in April in another division. I  
6 mean, that -- I say that glibly because that's -- that doesn't  
7 seem like the real issue to me, that they want to be here  
8 because they understand, from prior experience in front of  
9 you -- we do, too. My colleagues elsewhere in the DOJ appeared  
10 before you several times -- that, you know, you move quickly,  
11 and you have -- you do -- you get a decision out, and it's a  
12 thorough and fair decision.

17:26:09 13 I understand that, but that doesn't sound, to me, like  
14 a reason that is relevant to the venue analysis. That, to me,  
15 sounds like they like how you ruled and handled yourself and  
16 your cases in your courtroom in the past. That's not a criteria  
17 under *Volkswagen*. That's not a criteria under 28, U.S.C., 1391.

17:26:28 18 The question is who and where does the substantial  
19 connection lay: Here, Victoria, compared to any other division  
20 in the Southern District or a number of other places within  
21 Texas? It's not here. To me, it seems like the most logical  
22 place with the biggest connection, with plenty of judges who  
23 also move their cases very quickly, is in Houston where 1,500  
24 individuals, out of 2,700 in question, seem to be likely to go  
25 to once they enter the United States and make their way to their

1 final destination.

17:26:59 2 And other than the fact that Texas is a resident  
3 everywhere in this state, I haven't heard anything about what  
4 the connection is here. And so really, with that, I feel like  
5 I'm beginning to say -- I don't want to be annoying by saying  
6 the same thing over and over, but that's really what it is, at  
7 the end of the day.

17:27:14 8 There is no connection here. Putting aside the prior  
9 27 cases and whether there was an arguable connection, this one  
10 doesn't have it at all, and that is why we filed this motion in  
11 this case and not in any of those other ones.

17:27:27 12 **THE COURT:** Okay. You moved for transfer based on  
13 three grounds. You focused -- you didn't really focus very much  
14 on the first one, which is improper venue. So, to me, there's  
15 improper venue; then there's more reasonable -- I'm sorry, a  
16 more convenient venue; and then there's kind of the single-judge  
17 division perception, interest of justice. Did I fairly  
18 characterize those three?

17:27:51 19 **MR. REUVENI:** Yes, Your Honor.

17:27:51 20 **THE COURT:** Okay. So I didn't hear a whole lot on the  
21 1406, which is the improper venue. So is it the Department of  
22 Justice's position that the State of Texas can only -- is -- is  
23 only present in Austin for purposes of suing? It cannot sue in  
24 any of the other divisions?

17:28:09 25 **MR. REUVENI:** No, that's not quite our position. Our

1 position is that with respect to the federal government, under  
2 23 -- I'm sorry, 28, U.S.C., 1391(e), which is the special venue  
3 provision for the federal -- for the federal government as a  
4 defendant, if they're not suing where a substantial part of the  
5 events in question happened, and they're not suing where  
6 defendant resides, yes, they only reside in Austin, but I go  
7 back to the example that I gave earlier about the border wall.

17:28:35 8           That agency -- there may be subagency that resides in  
9 a more specific division. There may be an agency who manages  
10 the affairs of Texas with respect to, I don't know, health or  
11 crime or education specific to somewhere in the Northern  
12 division; somewhere in the Southern division; somewhere in the  
13 Western division -- I don't know enough about how Texas is  
14 organized as a state. I'm not even going to speculate. I don't  
15 want to look foolish -- but that would be an example of Texas or  
16 one of its subagencies suing somewhere other than where Texas  
17 resides.

17:29:09 18           But the Texas -- Texas, as a sovereign, speaks through  
19 its agents, and here it's speaking through the Texas AG. The  
20 Texas AG's principal place of business -- I don't think anyone's  
21 going to dispute -- is in Austin where the Texas AG's office is;  
22 where the state capital is.

17:29:26 23           So in that scenario, where there's no connection  
24 whatsoever to the underlying division, there's no property at  
25 issue in the underlying division, and defendants themselves

1 don't reside in the underlying division, yes, our view is that  
2 any state, not just Texas, has to sue where it has its principal  
3 place of business, which would be here, Austin.

17:29:43 4 **THE COURT:** All right. So the venue provision that I  
5 see that Texas has invoked is 1391(e)(1)(C). So the  
6 "substantial part of the events or omissions giving rise to the  
7 claim occurred" is in a different provision. That's in B. So  
8 A, "as a defendant in the action resides," I don't think anybody  
9 contends that the United States resides, for venue purposes, in  
10 the Victoria Division.

17:30:03 11 The next one is, "a substantial part of the events or  
12 omissions giving rise to the claim occurred, or a substantial  
13 part of property that is subject to the action is situated." So  
14 there's the substantial part of the events that you've been  
15 talking about; is that correct?

17:30:18 16 **MR. REUVENI:** Yes, Your Honor.

17:30:19 17 **THE COURT:** All right. So now I'm talking about C,  
18 and I'm -- this is just about improper venue. C says, "where  
19 the plaintiff resides, if no real property is involved."

17:30:28 20 Everybody agrees there's no real property involved,  
21 correct?

17:30:31 22 **MR. REUVENI:** Yes.

17:30:32 23 **THE COURT:** All right. So that doesn't have anything  
24 to do with where the substantial part -- or the -- the  
25 substantial part of the events or omissions giving rise to the

1 claim occurred, correct?

17:30:45 2 **MR. REUVENI:** That's -- that provision does not, but I  
3 -- I don't know if you have more questions on that, but I have  
4 an answer that maybe doesn't --

17:30:50 5 **THE COURT:** No. I just want to make sure because  
6 I -- I don't -- what I've been seeing Texas say is that they  
7 reside anywhere in the state of Texas. I mean, that's really  
8 where it is. That's apart -- separate and apart from the  
9 substantial part of the events.

17:31:02 10 Do you think that if it can be -- if the Fifth Circuit  
11 held, in a different case, the State of Texas resides anywhere  
12 within -- within the state of Texas for division purposes, that  
13 1391(e)(1)(C) would apply in this case?

17:31:18 14 **MR. REUVENI:** Yes, Your Honor. I -- we would -- we  
15 would concede that if you were to find, the Fifth Circuit were  
16 to find that Texas is resident in every division in the state  
17 under the same logic as some of these other cases, if they're  
18 present as a sovereign everywhere in the state, that we don't  
19 win our 1406 motion.

17:31:33 20 **THE COURT:** Okay.

17:31:33 21 **MR. REUVENI:** But before I -- but --

17:31:35 22 **THE COURT:** Go ahead. I'm sorry. No, I interrupted.  
23 I'm sorry.

17:31:38 24 **MR. REUVENI:** Before -- before I give up on that, I  
25 just want to point the Court to 1391(a), which says, "Except as

1 otherwise provided by law" -- and so that first special venue  
2 provision. There's no special provision here. It's 1391.  
3 Texas cites only 1391 in the complaint -- "This section shall  
4 govern venue of all civil actions brought in district courts of  
5 the United States."

17:32:00 6 And then we cited a case in the reply brief from the  
7 Supreme Court in 2013, Atlantic something or other -- but just  
8 2013. And there the Court was pretty clear this is -- you need  
9 to find venue based on the provisions in this statute. You're  
10 not looking at what Texas refers to as common sense or what  
11 other courts have said is the legislative history. We need to  
12 look at the text.

17:32:22 13 So if we're looking at the text, other than with  
14 respect to the federal government, there are only two residency  
15 definitions in the statute. There's (d), which is irrelevant  
16 here -- it's residency of corporations where there are multiple  
17 districts in the state -- and then there's (c). There's (c)(1),  
18 natural person; (c)(2), an entity with a capacity to sue and be  
19 sued; and (c)(3), a defendant not resident.

17:32:45 20 And so it's obviously not (c)(1) or (c)(3). So all  
21 that's left is (c)(2), and as I understand plaintiffs' argument,  
22 a state and only a state sovereign exists outside of the venue  
23 statute, even though the venue statute says this controls for  
24 everything and has specific definitions of residency that go to  
25 five or six different entities. But states, for some reason,

1 Congress decided they meet a different venue provision, a  
2 different definition of residency that's not codified in the  
3 text of this statute, and to us that seems wrong. We would  
4 start with the text.

17:33:19 5 I know there are other cases. There are four of them.  
6 We concede there are four cases out there that go the other way  
7 on this, but each and every one of them just says it's common  
8 sense or just says, well, we're looking at legislative history  
9 instead of the text.

17:33:33 10 We -- starting with the text and, frankly, ending with  
11 the text, because there's no ambiguity there, the only category  
12 Texas or any state can fall under is (c)(2), entity with a  
13 capacity to sue and be sued.

17:33:44 14 **THE COURT:** Mr. Reuveni --

17:33:46 15 **MR. REUVENI:** That provision says --

17:33:46 16 **THE COURT:** Mr. Reuveni, real quick --

17:33:47 17 **MR. REUVENI:** Yes, Your Honor.

17:33:52 18 **THE COURT:** Is there any case -- you said there are  
19 four or five cases that have gone the other way on this, that  
20 the state is sovereign within -- anywhere within its borders --  
21 I mean, resident within anywhere in its borders. Are you aware  
22 of any cases that has held to the contrary?

17:34:09 23 **MR. REUVENI:** No, Your Honor. If I was aware, it  
24 would be in our brief. So --

17:34:11 25 **THE COURT:** No, I just want to say there was a litany

1 of cases that we're talking about at the Supreme Court of Ohio.  
2 And I'm not trying to get snarky with you, I just wanted to find  
3 out if -- I mean, what do I do when every case that's addressed  
4 this issue, you think wrongly, has held against you on it?

17:34:29 5 **MR. REUVENI:** Your Honor, that's a -- that's a fair  
6 question to us. I don't have a great answer other than they got  
7 it wrong, and there are times, you know, when four or five  
8 courts [sic] come before a court and they rule one way, and  
9 then, lo and behold, they all get reversed by the higher court  
10 or get disagreed with by another court.

17:34:44 11 We think that's the situation here, and I know  
12 you've -- were focused on their residence now, but even -- this  
13 is why I started off with regardless of whether you think  
14 they're a resident here --

17:34:53 15 **THE COURT:** Right, no.

17:34:54 16 **MR. REUVENI:** -- there's two other off-ramps to the  
17 government --

17:34:57 18 **THE COURT:** Right. No, but you led off in your brief  
19 with that, and I'm just going systematically through. I'm just  
20 following your motion, and so that was it.

17:35:03 21 And like I said, I wasn't trying to get horsey with  
22 you. I was just trying to find out -- because, like you said,  
23 you did focus most of it on the -- on the perception issue and  
24 the connection, but the connection is really tied to a  
25 different -- the substantial part of the events is really tied

1 to a different venue provision, and I was just wanting to make  
2 sure that's true.

17:35:23 3 Mr. Olson, what is -- is the only basis for venue 30-  
4 -- 1391(e)(1)(C), in your opinion?

17:35:32 5 **MR. OLSON:** That's the only one that (indiscernible).

17:35:34 6 **THE COURT:** Okay. So when I look at 1391(e)(1)(C), it  
7 says, "the plaintiff resides" -- where the plaintiff resides,  
8 okay? Then, if I go up to 1391(c), it says, "Residency." So  
9 that's where I find the definition for residency, and then it  
10 says, "For all venue purposes," right after "residency" where it  
11 defines resides, I assume.

17:35:58 12 So where do you fit within 1391(c)? Because it says,  
13 "For all venue purposes."

17:36:08 14 **MR. OLSON:** It seems (indiscernible) --

17:36:14 15 **THE COURT:** We can't -- we can't -- I can't hear you.

17:36:16 16 **MR. OLSON:** I'm sorry, Your Honor. I'm going to need  
17 to get a better microphone before my next hearing.

17:36:23 18 **THE COURT:** All right.

17:36:24 19 **MR. OLSON:** The state is not included in that section.  
20 It was not there.

17:36:28 21 **THE COURT:** But doesn't it say for all ven- --  
22 residency for all venue purposes?

17:36:33 23 **MR. OLSON:** It does say that for all venue purposes,  
24 but that covers the listed entities for all venue purposes. And  
25 unless Congress speaks clearly, that it intends for something to

1 cover a state, it does not because of the state's status as a  
2 sovereign. There would be a better argument that that language  
3 covers Texas if, instead of "an entity with a capacity to sue or  
4 be sued," it had said "any other plaintiff," or "any other  
5 party," but that was not the language that Congress chose.

17:37:09 6 Congress chose to use the language that it typically  
7 used to refer to artificial entities that are set up as limited  
8 liability or joint stock or voluntary associations. It was not  
9 talking about the separate sovereigns that make up the  
10 United States.

17:37:35 11 **THE COURT:** All right. Well, let me -- let's move to  
12 the convenience, the 1404, and then I'll finish up with the  
13 single-judge division question.

17:37:42 14 So for convenience, there are a litany of factors. I  
15 was a labor employment lawyer. I routinely moved under 1404(a),  
16 and it was normally because the plaintiff had sued where they  
17 lived, even though -- I practiced primarily in Houston at that  
18 time. That's where they worked. That's where all the documents  
19 were. That's where all the witnesses were. In order to get  
20 them to go to trial, they wanted to depose everybody. It was  
21 going to be really expensive.

17:38:05 22 In the old days, there was not electronic delivery,  
23 and so in order to do that, I needed to list witnesses that I  
24 thought would testify and kind of summarize what they were, and  
25 I had to do that by affidavit in the Fifth Circuit. And so

1 that's kind of that first one, the relative ease of access to  
2 sources of proof.

17:38:24 3 Mr. Reuveni, I don't know -- I don't know that you  
4 spent a lot of time -- you did talk about where the documents  
5 were, but from the United States' perspective, everything that  
6 you think you're going to produce, or at least 99 percent of it,  
7 is the administrative record, correct?

17:38:40 8 **MR. REUVENI:** I would say 99 percent, but the  
9 administrative record is the largest piece of it. Yes, that's  
10 in DC, and then any witnesses that we may -- either be called  
11 upon to bring or bring ourselves, if we get into injury, or the  
12 other things that are outside the merits, they're all uniformly  
13 going to be, most likely, out of DC.

17:38:59 14 **THE COURT:** Okay.

17:38:59 15 **MR. REUVENI:** There may be -- there may be a witness  
16 or two that speaks to these numbers that we're talking about  
17 here, but as of right now, yes, that's right.

17:39:08 18 **THE COURT:** All right. So the administrative record  
19 is going to be filed on ECF. So even though it's in DC, it's  
20 going to be publicly available around the world, correct?

17:39:17 21 **MR. REUVENI:** Yes, but I will point out that in pretty  
22 much every one of these cases, our plaintiffs have suggested  
23 there was an issue with the record, and so I had to submit  
24 supplemental documents; in a number of cases have sought to  
25 depose individuals about the contents of the record and how it

1 was produced.

17:39:34 2 I know that's speculative right now. I understand if  
3 that's your response to that, but it's not as clean-cut and  
4 clear and dry as, Hey, the record's going to be on ECF; what's  
5 the problem? We may have disputes about it, and if there are  
6 disputes about it, they may not be most convenient to resolve  
7 here in Victoria compared to DC or Austin or elsewhere.

17:39:53 8 **THE COURT:** Well, and you're talking about the  
9 witnesses and the documents. I mean, are any of your documents  
10 going to be in Austin?

17:40:01 11 **MR. REUVENI:** Our documents, no; Texas' documents,  
12 yes.

17:40:04 13 **THE COURT:** Okay. Like I said, if it goes to  
14 Austin -- it seems to me that most of the witnesses are going to  
15 be the plaintiffs', and they need to make them available for  
16 deposition. And if you have witnesses that you don't want to  
17 expend, then the plaintiffs need to depose them in Washington if  
18 the case is in Austin or Victoria or Houston or Galveston,  
19 correct?

17:40:27 20 **MR. REUVENI:** Correct.

17:40:27 21 **THE COURT:** Okay. So, I mean, that's not really where  
22 the meat of your argument is. It's not really that it's  
23 inconvenient. I mean, isn't that -- I mean, that's accurate,  
24 right? Like I said, I don't want to...

17:40:37 25 **MR. REUVENI:** No, it's fair, Your Honor. When it

1 comes to 1404 or outside of 1406, the government loses on  
2 residency, we have two primary arguments: That there's just no  
3 connection to this forum whatsoever --

17:40:47 4 **THE COURT:** Right.

17:40:47 5 **MR. REUVENI:** -- and the harms -- harms alleged are  
6 all happening somewhere else; and then the interest of justice,  
7 that there's the perception of the integrity of the courts.

17:40:58 8 **THE COURT:** All right. So let's move to that, then,  
9 the perception of justice.

17:41:01 10 So the focus of your motion, as I see it, is that it  
11 should be filed -- if it stays in Texas, it should at least be  
12 filed in any division in the Southern District of Texas that has  
13 multiple judges; is that correct?

17:41:14 14 **MR. REUVENI:** Yes, because we're -- at this point, we  
15 are conceding -- or you will have found residence of Texas --

17:41:20 16 **THE COURT:** Right.

17:41:20 17 **MR. REUVENI:** -- is anywhere. So, yes, if we're going  
18 to stay in the Southern District, it should go somewhere where  
19 this perception problem doesn't exist, including, at the time we  
20 file the motion, to a potential division where you would still  
21 be assigned cases.

17:41:31 22 **THE COURT:** Right. As I'm asking you a question on  
23 this, I'm not trying to trick you into conceding on 1406 or  
24 1404(a). I've just moved on like this was the only --

17:41:40 25 **MR. REUVENI:** I understand.

17:41:40 1           **THE COURT:** Okay. So -- and so you also don't have a  
2 problem -- I think, like you said, you talked about it. You  
3 said: (Reading) Defendants are not moving to recuse and have no  
4 concerns with the impartiality of this Court or any of the judges  
5 in the district. Indeed, defendants' motion suggested transfer  
6 to Corpus Christi where, at the time of the filing, this Court  
7 was randomly assigned cases along with two other judges.

17:42:02 8           And so you didn't have a problem with Corpus Christi,  
9 obviously, correct?

17:42:06 10           **MR. REUVENI:** Correct.

17:42:06 11           **THE COURT:** So you would not have a problem if it was  
12 randomly assigned and I -- and I got it to preside over the  
13 case?

17:42:15 14           **MR. REUVENI:** Absolutely. Correct.

17:42:16 15           **THE COURT:** All right. So, obviously, any plaintiff  
16 is going to want a judge who is fair and impartial and without  
17 bias or prejudice, and that's what you want as well, right, a  
18 fair and impartial judge who's not going to be biased or  
19 prejudiced, right?

17:42:28 20           **MR. REUVENI:** Yes, Your Honor.

17:42:29 21           **THE COURT:** And that's what -- I mean, that's what  
22 you've said. So do you believe that I would preside over this  
23 case fairly and impartially if it stayed in Victoria or went to  
24 Corpus Christi?

17:42:41 25           **MR. REUVENI:** Yes, Your Honor.

17:42:42 1           **THE COURT:** And do you believe that I would preside  
2 over this case without bias or prejudice if it was in Victoria  
3 or was transferred to Corpus Christi and landed on my docket?

17:42:55 4           **MR. REUVENI:** We do, Your Honor. I just -- if I may,  
5 I just -- I understand why you're asking me these questions.  
6 This is -- this is not -- this is not the focus of our venue  
7 argument; we don't think necessarily relevant to the --

17:43:04 8           **THE COURT:** No, I understand.

17:43:05 9           **MR. REUVENI:** But I understand.

17:43:07 10          **THE COURT:** Yeah. I just want to make sure that it's  
11 clear on the record that you're not worried that I'm going to be  
12 biased or prejudiced if I get the case in Victoria or  
13 Corpus Christi, correct?

17:43:15 14          **MR. REUVENI:** We are not worried that you will be.

17:43:18 15          **THE COURT:** And you talked earlier about having  
16 conversations internally with some of your colleagues in DOJ.  
17 Was there any indication that I was biased or prejudiced in any  
18 prior case involving the Administration?

17:43:30 19          **MR. REUVENI:** I want to be careful here. I don't want  
20 to put any of my colleagues --

17:43:34 21          **THE COURT:** No, that you have talked to.

17:43:36 22          **MR. REUVENI:** As hearsay -- but, no, I have been given  
23 no reason, as an attorney, to believe that I will not get a fair  
24 shake in front of Your Honor. I've been given no reason to  
25 believe that.

17:43:46 1           **THE COURT:** Okay. And so the concern is only that  
2 there's a public perception. What makes you think that the  
3 public would lack confidence in the impartiality of this Court?

17:44:01 4           **MR. REUVENI:** See if I can try this a different way  
5 because I know you asked me this before, and you're asking it  
6 again.

17:44:07 7           **THE COURT:** I'm asking it a different way. Mostly,  
8 what you're saying is you're not worried about whether or not  
9 you're going to get a fair trial. You're worried that the Court  
10 is damaged by the fact that there is a public perception that  
11 I'm not going to be fair. Is that...

17:44:20 12           **MR. REUVENI:** That's part of it. It's the perception  
13 of -- it's what you just said. It's that when this case goes up  
14 on appeal, and there's a question as to -- amongst the appellate  
15 judges or the Supreme Court, if we get there, why this was filed  
16 where it was filed, there's a question as to why, if the  
17 plaintiffs, State of Texas and others, are filing these in --  
18 only in front of a handful of judges -- if, in fact, they  
19 agree -- and I believe they do -- with us that every single  
20 judge in Texas and any of the districts and divisions can handle  
21 a case fairly, impartially, expeditiously and so on, why are  
22 they not filing, then, in front of any of these other judges?

17:44:54 23           That's, really, the -- sort of the negative predicate  
24 of you are filing in seven divisions, the vast majority of them  
25 in four divisions. You're not filing in your own state capital.

1 You're not filing them in your biggest metropolitan area.  
2 You're not filing immigration cases where you say the harms are  
3 going to occur and where there is a local interest in having  
4 those harms adjudicated by individuals who are in that  
5 community, and none of that's happening.

17:45:19 6 So it's not just you, Your Honor. It's not just  
7 Victoria. It's the whole package of filing in -- almost  
8 exclusively in four divisions and what that says about  
9 Texas -- what that says about what Texas is saying about the  
10 courts. I mean, I hear, again, Mr. Olson saying he doesn't know  
11 why they file where they do, and fine. But with no explanation,  
12 then that's the question: Why?

17:45:41 13 And the only answer we have, after we've briefed this  
14 and had this argument and every opportunity has been given to  
15 why here, why Victoria, is because, We like you, Your Honor --

17:45:50 16 **THE COURT:** Yeah. Well, I mean --

17:45:51 17 **MR. REUVENI:** -- that's not an okay -- that's not an  
18 okay consideration of the venue statute.

17:45:55 19 **THE COURT:** Well --

17:45:56 20 **MR. REUVENI:** They -- they say they want to be in  
21 front of you because you move the case quickly and you're fair,  
22 fine, but that's not -- that's not an appropriate consideration  
23 of the venue.

17:46:03 24 **THE COURT:** So, I mean, like I said, basically, the  
25 concern that I've had is that the public perception is thinking

1 that Texas is hoping that I'm going to rule in their favor.  
2 That's why, you know -- but what I've heard you say is that you  
3 think that you're going to get a fair trial in front of me, but  
4 the public might not think that despite the fact that you do.

17:46:22 5 **MR. REUVENI:** Yeah, and I think that's a legitimate  
6 concern. I think even if I, the government attorney thinks  
7 this, if the public at large begins to doubt Your Honor through  
8 the judiciary, if Supreme Court justices begin to doubt the hard  
9 work and the impartiality of the lower courts and the district  
10 court judges that are deciding cases, and then we're -- making  
11 fact findings that go up on appeal, then we have a real problem  
12 here.

17:46:45 13 We have a real perception problem that can easily be  
14 resolved by -- by -- in a case like this where there is no  
15 connection whatsoever, and so it's really just, We think we  
16 reside everywhere, and yet we're only filing in four or five  
17 places --

17:47:01 18 **THE COURT:** Well, on this --

17:47:02 19 **MR. REUVENI:** -- let's just randomly assign.

17:47:04 20 **THE COURT:** On this issue about the public concern  
21 about fairness, don't you think you could go a long way toward  
22 addressing any concern the public might have by just saying, in  
23 public, what you said here on the record as an officer of the  
24 Court? "We don't have any concern about Judge Tipton. He will  
25 give us a fair trial. We don't have any concern about the way

1 he's presided over previous cases." Wouldn't that go a long way  
2 to addressing any public perception issues?

17:47:28 3 **MR. REUVENI:** Your Honor, that's a fair point, but,  
4 ultimately, the issue is not so much whether DOJ thinks it's  
5 going to have a fair trial in front of one judge or another.  
6 The issue is why is this --

17:47:36 7 **THE COURT:** No. No, you told me it was about -- you  
8 told me it was about the public perception. I'm telling you --  
9 you just told me: I think I'll get a fair shot in front of  
10 Judge Tipton. He's fair. He's not going to be biased or  
11 prejudiced. You know, he ruled against us, but I don't think  
12 that the deck was stacked against us.

17:47:52 13 Don't you think if the public heard the Department of  
14 Justice say that, that it would go a long way towards addressing  
15 your public perception concern?

17:48:03 16 **MR. REUVENI:** I mean, I think that's a fair point,  
17 Your Honor, and I think, if you're raising the question as to  
18 why doesn't the Department of Justice say something to that  
19 effect, I would also wonder why doesn't Texas tell the public  
20 why it files only in front of six or seven judges.

17:48:17 21 **THE COURT:** Well, that's a -- that's a point that I  
22 just asked them, right? I just asked them. You heard their  
23 response, such as it was.

17:48:25 24 But like I said, I am concerned about how the federal  
25 courts are perceived. I'm not worried about the Court of

1 Appeals or the Supreme Court justices thinking I'm in the tank  
2 for one side or the other. You know, they -- I'm not as  
3 concerned about that.

17:48:38 4 I think that they'll -- and one of the reasons why is  
5 regardless of which way I rule, the losing party is going to  
6 immediately seek emergency expedited relief, and that would  
7 happen whether or not it was in a full courthouse full of judges  
8 or if it -- whoever loses is going to ask for an immediate stay  
9 on your case or the -- Texas is going to seek immediate relief.  
10 And I've granted stays in my decisions, right, in all the cases,  
11 correct?

17:49:05 12 Right?

17:49:07 13 **MR. REUVENI:** I'm aware of --

17:49:09 14 **THE COURT:** Right.

17:49:09 15 **MR. REUVENI:** I can't say as to all of them staying,  
16 but I believe Your Honor.

17:49:12 17 **THE COURT:** Right. And so then -- so my -- my  
18 opinions don't even go into effect until at least three judges  
19 of the Fifth Circuit have a chance to review my work and grade  
20 my papers. I mean, my decision doesn't -- and after that, with  
21 the cases before the Supreme Court, it was immediately appealed  
22 to the United States Supreme Court.

17:49:31 23 So then we had nine very smart people who had the  
24 opportunity to review my decision, and it did not go into effect  
25 until the Court of Appeals and the Supreme Court had a chance to

1 take a look at it. Don't you think that that also could go a  
2 long way toward addressing public perception issues if they hear  
3 that my decision doesn't go into effect until a court of appeals  
4 allows it to?

17:49:57 5 **MR. REUVENI:** Your Honor, I must admit I have not  
6 thought about and we have not really thought about the stay  
7 point, and that is -- if what I'm hearing is that as standard  
8 practice, Your Honor stays his decisions -- and I think the stay  
9 becomes an issue only, really, if it's a nationwide injunction.

17:50:15 10 **THE COURT:** No, no. No, I'm telling you that in every  
11 case the United States has moved for a stay, and I have granted  
12 it, and then it goes up to the Supreme Court -- then it goes to  
13 the Court of Appeals, and it's up to them how long that stay,  
14 stays in place.

17:50:29 15 In fact, in the case that's in front of the Supreme  
16 Court, the United States, because of an intervening decision  
17 that came out of the Supreme Court, came back and asked me about  
18 the 1252(f) case. And they said, you know: We think that this  
19 changes your opinion. I've looked at it. I disagree.

17:50:45 20 But I extended my stay sua sponte so that the  
21 Fifth Circuit could have enough time to take a look at that.  
22 Doesn't that -- I mean, if the public knew about that, don't you  
23 think that would go a long way to saying, Hey, this guy's trying  
24 to ramrod a decision without anybody being able to review it?

17:51:01 25 Nothing that I've done has been able to go into effect

1 without a court of appeals having it -- a chance to weigh in  
2 beforehand.

17:51:12 3 **MR. REUVENI:** Your Honor, everything you say, I can't  
4 quibble or disagree with that. The point I was -- I make -- and  
5 I apologize if I interrupted you -- is simply when the  
6 government seeks an emergency stay, it tends to be because  
7 there's an emergency nationwide judgment. What I'm hearing is  
8 that no matter which way you go, if you rule against the  
9 government in this case, and you're going to grant a stay of  
10 your ruling for some period of time -- I don't know for -- is  
11 this -- I admit I'm not familiar with every single stay order  
12 you've issued. So I apologize for that lack of familiarity --  
13 but a week, a month, until the Court of Appeals rules, I mean,  
14 sure, these things can go --

17:51:47 15 **THE COURT:** So to be clear -- to be clear, it's not  
16 until a week or a month. What I did was I granted it either for  
17 a week or two weeks until the Fifth Circuit -- because  
18 they -- what happens is you immediately file for a stay in front  
19 of the Fifth Circuit, and so they then decide whether or not to  
20 grant that. All I'm doing is giving a couple of weeks for the  
21 Fifth Circuit to have a chance to decide, and, quite frankly,  
22 they did.

17:52:10 23 The first time my preliminary injunction went up, the  
24 Fifth Circuit disagreed with me in large part. They issued a  
25 stay very quick; three very smart judges. And then the en banc

1 Fifth Circuit had a chance to rule on that, and then it came  
2 back down. Again, I came to a decision, and I stayed it. And  
3 then the Fifth Circuit got your application for a motion for a  
4 stay on an emergency expedited basis, and that was pending while  
5 my stay was in place.

17:52:39 6 It just seems like if there is a public perception  
7 that a single judge, wherever they are -- because there's only  
8 one judge that can preside over these cases at a time. If one  
9 judge is going to set nationwide policy, don't you think it  
10 could go a long way towards addressing public perception  
11 problems if the public knew, Hey, before his  
12 position -- opinions go into effect, he stays them until the  
13 Court of Appeals gets a chance to look at it?

17:53:06 14 **MR. REUVENI:** Your Honor, speaking for myself, because  
15 I have not had the chance to, obviously, discuss this with my  
16 chain of command at the DOJ, I can't disagree with what you're  
17 saying. I will say I think it's missing something. It's  
18 missing -- you're -- you're speaking to a DOJ attorney saying  
19 why doesn't DOJ publicize X, Y and Z. All excellent points; all  
20 fair questions; all ones I don't have a great answer for as I  
21 sit here in front of you right now.

17:53:31 22 **THE COURT:** Well, the reason --

17:53:31 23 **MR. REUVENI:** That could go both ways.

17:53:31 24 **THE COURT:** It's not that you're -- it's not that  
25 you're not publicizing it. It's that you're kind of furthering

1 the public perception concern by filing a motion that says that  
2 single-judge divisions are sketchy. I mean, that's what -- it's  
3 hard for someone to look at it and say, Well, what's the  
4 problem?

17:53:46 5 Well, Tipton must be in the tank, you know. And like  
6 I said, if you said, No, Tipton is not automatically biased  
7 against us; he can provide fair and impartial -- I think the  
8 public perception, which is 100 percent of what your  
9 single-judge division motion is about, public perception, that,  
10 and the fact that my opinion is stayed until a court of appeals  
11 gets to look at it seems, to me -- I don't know how a public  
12 that doesn't want a particular result, regardless of what the  
13 law says, would -- could look at that and go, Oh, okay, well,  
14 that makes sense.

17:54:19 15 **MR. REUVENI:** Again, I can't find really anything to  
16 disagree with there, Your Honor, speaking for myself. I just --  
17 to me, that seems incomplete. To me, if we're going to be  
18 asking the questions as sort of clarifying the perception  
19 problem for the public at large or for Supreme Court justices or  
20 appeal judges who I know you said you're less concerned with --

17:54:38 21 **THE COURT:** Well, no, don't put words in my mouth on  
22 that. I'm less concerned that they will think that it's  
23 sketchy. The public perception problem is certainly one that  
24 makes it look like the judge is in the tank for one side, and  
25 everybody on this -- in this hearing that's speaking apparently

1 disagrees with that. But you're filing a motion that kind of  
2 reinforces it without saying, No, Tipton's not in the tank for  
3 them, and by the way, he stays his opinions.

17:55:06 4 **MR. REUVENI:** I wasn't clear. Our perception issue is  
5 Texas' behavior raises the question that Texas seems to think  
6 these particular judges are -- and to quote your words,  
7 Your Honor -- in the tank for Texas. I just -- I want to make  
8 one point. I don't want to belabor this, and I think I know  
9 where this is all going, and I'm happy to just sit back down and  
10 be quiet. But I just want to make this one -- this last point,  
11 because you're raising these questions, and I don't have great  
12 answers.

17:55:30 13 But to me, again, if you're asking the U.S.  
14 Government, Why don't you communicate publicly X, Y and Z, which  
15 would, you know, bring the temperature down and suggest that  
16 Judge Tipton or any other judge is a fair and impartial jurist,  
17 and you (indiscernible) gas on the fire, it seems, to me, we're  
18 missing the same set of questions to the plaintiffs: Why do you  
19 only file -- instead of seven judges -- instead of the dozens  
20 and dozens of judges that exist within the Texas -- state of  
21 Texas that you're -- you say you reside in every one of these  
22 divisions, yet you never file in the vast majority of these  
23 divisions. What is the perception you're sending when you don't  
24 file in front of these other judges, including your state  
25 capital; including your biggest cities; including places with

1 international airports or the border, relevant to a case like  
2 this?

17:56:15 3 And when you do that over and over and over and over  
4 again without explanation, and then, when offered the  
5 opportunity to answer the question straight up, Why does your  
6 office do that, "I don't know, Your Honor," that doesn't give us  
7 over here at DOJ a lot of comfort. We don't really -- so when  
8 we're being asked to -- why don't you take the temperature down  
9 and say X, Y and Z, a judge in a single division --

17:56:38 10 **THE COURT:** Well, like I said, the biggest concern  
11 that I have is that if the public thinks that there is a judge  
12 who should recuse himself -- I mean, because that's basically  
13 what it is. If there's a judge who should recuse themselves  
14 because they can't be fair and impartial -- and I would, and it  
15 sounds like everybody who's arguing in this case agrees that's  
16 not appropriate, that I would be fair and impartial, but, you  
17 know, the judge -- the public is still left with that  
18 impression.

17:57:01 19 Like I said, whether or not you issue a press  
20 release -- I'm not saying that -- but the fact that you filed a  
21 motion which kind of reinforces what I think everybody agrees is  
22 a false premise, which is, is that -- that Judge Tipton is going  
23 to be biased or prejudiced in favor or against the parties in  
24 this case.

17:57:25 25 **MR. REUVENI:** And then I think one of the things I

1 know -- I learned late in my career as a lawyer is what I need  
2 to do is just sit down and be quiet.

17:57:32 3 **THE COURT:** No, that's okay. I've got some questions  
4 for Mr. Olson now.

17:57:35 5 Mr. Olson, so with respect to the single-judge  
6 division issues, what was it again? What were -- why do you  
7 file them in Victoria or in -- wherever, the single-judge  
8 divisions? Texas has decided to do it. There's a lot of  
9 divisions and a lot of judges in the state of Texas.

17:57:55 10 I know that you, also, are -- I can see from your  
11 response that you're very concerned about the reputation of the  
12 federal judiciary, and yet it keeps happening, you know. So  
13 what is it, from your perspective, that you could do? You know,  
14 you could take the tone down by filing in multi-judge divisions  
15 as well.

17:58:14 16 **MR. OLSON:** Inasmuch as that actually is a public  
17 perception, Your Honor, yes, that could -- that could happen. I  
18 doubt that that actually is the public perception so much as it  
19 is a couple of law professors beating a drum on Twitter. I have  
20 never heard anybody with any actual knowledge of the federal  
21 court system think that a judge was in the tank for one party or  
22 another.

17:58:48 23 **THE COURT:** But it concerns me that --

17:58:50 24 **MR. OLSON:** It's just never happened.

17:58:50 25 **THE COURT:** It concerns me that the public may

1 perceive that, either -- whether or not it's based on law  
2 professors or whether or not it's based on a motion or whether  
3 it's talked about in an oral argument, it concerns me  
4 that -- that -- that the public would -- the public needs to  
5 have confidence in the federal judiciary.

17:59:09 6 **MR. OLSON:** I agree, Your Honor, but I think our  
7 position is best summed up with what Mr. Reuveni said, which is  
8 the perception is Texas' behavior -- not the federal judiciary,  
9 but Texas' behavior, and if that's the problem, then there's no  
10 basis for a venue transfer. That's a basis for criticizing the  
11 State of Texas: Why is the State of Texas doing this? What  
12 about the State of Texas' case is so weak that they feel like  
13 they have to be coming back to these same judges over and over  
14 again? Can they not win the case unless they have such a good  
15 handle on the judge's philosophy that --

17:59:57 16 **THE COURT:** Well, to me -- this is kind of --

18:00:01 17 **MR. OLSON:** -- (indiscernible).

18:00:02 18 **THE COURT:** This is the -- this is converse of what I  
19 said to Mr. Reuveni, which is, is that if -- if -- it doesn't  
20 really matter because the district judge is going to rule, but  
21 then whoever loses is going to take it to the Court of Appeals.  
22 These conclusions -- I mean, we're interpreting a statute. I  
23 mean, we are just first base.

18:00:18 24 The Court of Appeals and, sometimes, the Supreme Court  
25 is going to be saying what this law says. All I can do is build

1 a record, make my initial judgment call, and then it's out of my  
2 hands. Like I said, the Fifth Circuit disagreed with me once,  
3 and then they agreed with me, and now it's in front of the  
4 Supreme Court.

18:00:35 5 But, you know, regardless of how many judges are in a  
6 building, and regardless of whether I rule for or against any  
7 particular party in this case, you know, this will be my initial  
8 ruling, but, eventually, this is going to be a Fifth Circuit  
9 ruling or a Supreme Court ruling. Nobody's going to be looking  
10 back and saying this is Tipton's ruling, in the end, and so --  
11 whether it's for or against the United States.

18:00:59 12 So like I said --

18:01:00 13 **MR. OLSON:** I agree with that analysis.

18:01:02 14 **THE COURT:** But, I mean, even if you lose, though, the  
15 first thing you're going to do is go to the Fifth Circuit to try  
16 to get me flipped.

18:01:10 17 **MR. OLSON:** Probably the second thing, Your Honor.

18 The first one would probably be to ask you to reconsider, but  
19 I -- I agree that that's high on the list of priorities.

18:01:25 20 But that, again, just goes to show why I don't believe  
21 this actually is a public perception problem. If we are going  
22 to try to get you reversed, then we are obviously pursuing a  
23 particular legal argument, not pursuing a particular judge.

18:01:43 24 **THE COURT:** All right. Well, Mr. Reuveni, I've sort  
25 of depressed myself because I've watched the sun go down in your

1 window back there. The sun was shining when we started this  
2 hearing, and now it is -- it is dark outside. So I'm -- I'm  
3 feeling like it's Miller time.

18:01:59 4 So I do want to give everybody the opportunity to, I  
5 guess -- have we talked it to death? Has everyone had the  
6 opportunity to weigh in?

18:02:11 7 Mr. Reuveni?

18:02:15 8 **MR. REUVENI:** I think we are where we need to be. I  
9 just have one last thing to say, and it just goes to something  
10 Mr. Olson said, which, apparently, we agree. The perception  
11 problem is not with you, Your Honor. The perception problem is  
12 not with the Article III judges of the Southern District or  
13 anywhere in Texas. The perception problem is: Why is Texas  
14 doing this? And so that spills over, potentially. That's the  
15 thrust of our argument, but why is Texas doing this when it  
16 could be filing these cases -- just to be cute here, there are  
17 28 divisions; there are 28 cases.

18:02:46 18 They could have filed one in every single division;  
19 give everybody a turn; give everybody an opportunity to be part  
20 of this bigger, as you said, Your Honor, nationwide policy-type  
21 setting cases. This is really the crux of the problem for the  
22 federal government, that we're in these policy-type setting  
23 cases, and there is this perception based on Texas' conduct that  
24 they're doing this for a reason.

18:03:07 25 And I just -- as I could go -- after this hearing, and

1 go back to my superiors and say, you know, Here's some things we  
2 could do that takes the temperature down, Texas could do the  
3 exact same thing by just filing a few of these not in a  
4 single-judge division going forward, and, you know, that -- so  
5 it begs the question, like, you know -- you made very fair  
6 points, and you raised very fair questions to me, Your Honor,  
7 but I still haven't heard, from the State of Texas, why they do  
8 this, and I still haven't heard why it doesn't create a  
9 perception problem.

18:03:37

10 In fact, what I heard them say is they agree it can  
11 create a perception problem, and at the end of the day, it's the  
12 crux of the government's motion here and the problem we have  
13 with this pattern of conduct, and that it just casts a pall on  
14 everything. And at the end of the day, a very careful decision  
15 that I think we all agree you are going to issue, is called into  
16 question not because of anything the Court has done, but because  
17 of the way random divisions are -- are -- are split up and case  
18 assignment rules and the litigation choices of the individual  
19 plaintiffs bringing these cases.

18:04:12

20 And so for all those reasons, and for many others that  
21 we discussed, I think it makes sense, even if you find that  
22 the -- Texas is resident here, to transfer this case for random  
23 assignment somewhere else in the Southern District. And now  
24 I -- now, for sure, I will sit down and be quiet.

18:04:30

**THE COURT:** All right. All right. So what I -- I

1 would invite -- I don't need, but I will invite -- because I've  
2 sprung some issues on you during this argument that were not  
3 briefed. Those were kind of issues that I thought about while I  
4 was reading your briefing -- to supplement. And you don't need  
5 to, like I said, but I would invite any additional  
6 supplementation -- I'm not going to rule from the bench, and so  
7 I'll need to kind of take a look at all of that, and I would  
8 welcome any additional thoughts that the parties have just, you  
9 know, at your own risk over the course of the next couple of  
10 weeks. Make sure that you are -- that you get it in, in that  
11 time frame.

18:05:08 12 Does that work for you, Mr. Olson?

18:05:13 13 **MR. OLSON:** Yes, Your Honor, it does.

18:05:14 14 **THE COURT:** Mr. Reuveni?

18:05:18 15 **MR. REUVENI:** Yes. I'll just take myself off mute.

18:05:20 16 Yes, Your Honor. So within two weeks' time of today,  
17 if we have anything else to say --

18:05:23 18 **THE COURT:** Like I said, I would -- I may come out  
19 with something in less than two weeks. I'm just saying you're  
20 starting to roll the dice after that. So, I mean, you guys,  
21 like I said, were hit with some issues today that were not in  
22 the briefs that were things, like I said, that I thought about.

18:05:36 23 If you want to reflect on them as opposed to being on  
24 the hot seat, I would enjoy your measured judgment and whatever  
25 you had to submit post argument.

18:05:46 1

**MR. REUVENI:** Very good, Your Honor.

18:05:47 2

**THE COURT:** All right. Thank you so much. If there's nothing further, do we have -- do you have any questions for me based on all of the other things that we've talked about, as well, or this?

18:05:55 6

Mr. Olson first.

18:05:58 7

**MR. OLSON:** No questions, Your Honor, but I do hope that, much like you did with the prioritization argument, that in the future you remember this argument as having ended at around 5:00 as opposed to around an hour later.

18:06:12 11

**THE COURT:** No, what I -- what I'm going to remember about it is that a fire alarm went off in the middle of it, and I had to go wait in the street and wait in my robe and wait to go back up. That was less than elegant.

18:06:23 15

Mr. Reuveni, did you have anything further?

18:06:26 16

**MR. REUVENI:** Nothing further. I was just confirming we owe you a proposal in how to proceed timing wise this Friday, and we're going to treat the preliminary injunction brief as a merits brief, and we're going to give you a response within the normal timetable, and we'll work that out with plaintiff on a schedule, and then we're going to do a reply, and that's all.

18:06:45 22

**THE COURT:** All right. Thanks very much. This was very helpful, and I appreciate the thoughts from both sides. Thank you very much. Good -- good evening. Sorry to keep you so late. Sorry about all the distractions.



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION**

STATE OF UTAH, *et al.*,

*Plaintiffs,*

v.

MARTIN J. WALSH and UNITED STATES  
DEPARTMENT OF LABOR,

*Defendants.*

No. 2:23-cv-00016-Z

**ORDER DENYING MOTION TO TRANSFER VENUE**

The Defendants' motion to transfer venue, ECF 15, is denied.

Signed on March \_\_, 2023, at Amarillo, Texas.

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Matthew J. Kacsmaryk  
United States District Judge